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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,032	09/24/2003	David C. Racenet	1879 CON II	5015

7590 09/30/2004

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EXAMINER

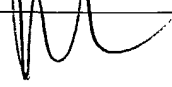
NGUYEN, CAMTU TRAN

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/670,032	Applicant(s) RACENET ET AL. 	
	Examiner Camtu T. Nguyen	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-21 is/are pending in the application.
- 4a) Of the above claim(s) 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Preliminary Amendment*

This Office Action is in response to applicant's preliminary amendment filed on September 24, 2003. Claims 1-4 have been cancelled. Claims 5-21 are pending.

### *Election/Restrictions*

Applicant's election of claims 5-17 in the reply filed on August 25, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 18-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 25, 2004.

### *Drawings*

The drawing of figure 1 is objected to because it seems to disagree with the "Ring 120 is provided with holes 120a and posts 120b" as disclosed in the specification on page 7, line 4. Figure 1 illustrates the posts referenced by numeral 120a and holes referenced by numeral 120b. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7, 9-14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antoon, Jr., et al (U.S. Patent No. 5,628,732) and further in view of Powell (U.S. Patent No. 6,079,692). Antoon discloses in figures 1, 3-6, and 14-15 an improved universal seal having features as recited in these claims (column 4 lines 45-59, column 5 lines 15-38, column 7 lines 21-23) except that Antoon does not teach the seal member comprising a fabric. Powell depicts in figure 9 the device comprising combination of a diaphragm portion and a seal portion from which a fabric is interlayer with the diaphragm. Therefore, it would have been obvious to one of ordinary skill in the art to included a fabric taught by Powell enveloped on both sides of the Antoon's inner seal as such fabric enhanced flexibility. With regards to claims 10 and 14, Antoon, Jr. et al discloses the sealing region (48) of the elastomeric seal (26) having a first underlying layer (49) and a second underlying layer (50). The introductory statement of intended use and all other functional statements have been carefully considered but deemed not to impose any structural limitations on the claims distinguishable over the Antoon, Jr., et al device, modified by Powell, in the sense of 35 USC 103 which is capable of being used as set forth in the claims.

Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antoon, Jr. et al, as modified above by Powell, and further in view of Stephens et al (U.S. Patent No.

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5,350,364). Antoon, as modified above, discloses an improved universal seal having features as recited in this claim except for the seal member having an hourglass shaped. Stephens teaches in figures 3 the universal seal for trocar assembly having an hourglass shape. Therefore, it would have been obvious to one of ordinary skill in the art to substitute and apply the seal member taught by Stephens for Antoon's seal as such shape would accommodated surgical tool of various diameters without leaking fluids from the anatomical cavity.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

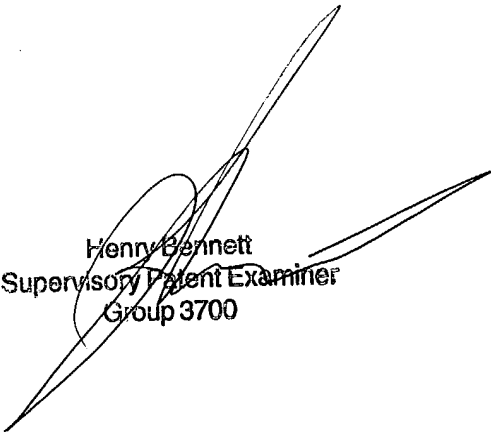
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Camtu Nguyen  
September 26, 2004



Henry Bennett  
Supervisory Patent Examiner  
Group 3700